



foreseeable, it should find that the burden imposed on Tin Roof to provide security outside of its premise is substantially outweighed by the foreseeable harm to Plaintiff. *McClung*, 937 S.W.2d 891; *Staples*, 15 S.W.3d 83; *Barron v. Emerson Russell Maint. Co.*, 2009 WL 2340990 (Tenn. Ct. App. 2009).

2. There is no basis for Plaintiff's claim for negligent hiring, training and supervision because there is no evidence that Tin Roof employees were unfit for their employment. *See, e.g., Marshalls of Nashville, Tenn., Inc. v. Harding Mall Associates, Ltd.*, 799 S.W.2d 239, 243 (Tenn.Ct.App.1990); *Doe v. Catholic Bishop for Diocese of Memphis*, 306 S.W.3d 712, 717 (Tenn. App. 2008); and *Brown v. Mapco Exp., Inc.*, 2012 WL 3590379 (Tenn. Ct. App. 2012). There is no allegation of excessive force or "unfitness" of the security staff or the bartending staff working at the time the incident occurred. Plaintiff's conclusory allegations are not enough to establish the requisite unfitness of the employees or any unreasonable risk posed by the employment of the Tin Roof employees at the time the incident occurred.

3. Plaintiff's Dram Shop claim fails as a matter of law because Plaintiff cannot establish beyond a reasonable doubt that Tin Roof sold alcohol to Hanson while he was visibly intoxicated or that the sale of alcohol was a proximate cause of his injury. Tenn. Code. Ann. § 57-10-102; *Biscan v. Brown*, 160 S.W.3d 462 (Tenn. 2005); *Worley v. Weigels*, 919 S.W.2d 589 (Tenn. 1996). The Court should dismiss the individually named corporate officers and managers because the undisputed facts show none of these individuals were present at the time the incident occurred, and they cannot otherwise be liable for actions that are considered "corporate actions." Tenn. Code Ann. § 48-18-403; *Brown v. Donco Enterprises, Inc.*, 783 F.2d 644 (6th Cir.1986);

*General Tel. Co. of Southeast v. Boyd*, 343 S.W.2d 872 (Tenn. 1961); *Forrester v. Stockstill*, 869 S.W.2d 328, 333 (Tenn.1994).

WHEREFORE, premise considered, Defendants respectfully request this Court grant summary judgment on all grounds, dismiss this matter against these Defendants as a matter of law, and tax any costs of this matter to the remaining parties.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing document has been served by the methods indicated upon the following on this 21st day of September, 2012:

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